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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,739	11/20/2006	Mark E. Pomper	34565-002 C1P NATL	9607
4219	7590	09/25/2008	EXAMINER	
MALLOY & MALLOY			PURINTON, BROOKE J	
2800 S.W. THIRD AVENUE			ART UNIT	PAPER NUMBER
HISTORIC CORAL WAY				2881
MIAMI, FL 33129				
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				09/25/2008 PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/588,739	POMPER, MARK E.
	<b>Examiner</b>	<b>Art Unit</b>
	Brooke Purinton	2881

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 04 August 2006.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-11 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-11 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 04 August 2006 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/15/2007</u> .  | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark (USPN 4449746) and McGinley et al. (USPN 4833335).

**Regarding Claim 1,** Clark teaches a mobile radiation treatment vehicle comprising: a patient treatment compartment (Figure 2, 16, procedure room), said patient treatment compartment for housing a treatment device capable of emitting radiation (part 24 CT scanner); and a shielded partition member positioned in said patient treatment compartment and proximate to said treatment device (walls 28 and doors 11, 29, and 55, window 27), said shielded partition member positioned to reduce or prevent exposure to a user from radiation emitted from said treatment device during patient treatment (technician at location 57 behind lead glass window 27).

Clark fails to teach that the CT scanner or the radiation generating device is used in connection with radiation therapy.

McGinley et al. teach a shielded door for radiation therapy rooms, stating that "the present invention relates to a door for a treatment room with a medical accelerator which produces x-ray beams used in cancer therapy. This door prevents the escape of neutrons from the room while permitting access to the accelerator," (1, 7-10).

X-ray beams are used in cancer therapy. Clark shields from x-ray beams used in tomography. Therefore, the mobile radiation treatment vehicle of Clark would work as a radiation therapy, and it would be an obvious substitution of one treatment device for another.

**Regarding Claim 2,** Clark teaches a mobile radiation treatment vehicle comprising (title):

a patient treatment compartment having at least one radiation shield member (Figure 2, part 16), said at least one radiation shield member positioned to prevent at least a portion of radiation emitted from a treatment device from passing through an interior of said patient treatment compartment to an outside area (walls 28); said treatment device capable of emitting radiation and positioned in said patient treatment compartment (CT scanner, part 24 in Figure 2); and a shielded partition member positioned in said patient treatment compartment and proximate to said treatment device, said shielded partition member positioned to reduce or prevent exposure to a user from radiation emitted from said treatment device during patient treatment (window 27 between treatment room and console for technician 57).

Clark fails to explicitly state that the CT scanner is used in connection with radiation therapy.

However, McGinley et al. teach a shielded door for radiation therapy rooms, stating that "the present invention relates to a door for a treatment room with a medical accelerator which produces x-ray beams used in cancer therapy. This door prevents the escape of neutrons from the room while permitting access to the accelerator," (1, 7-10).

X-ray beams are used in cancer therapy. Clark shields from x-ray beams used in tomography. Therefore, the mobile radiation treatment vehicle of Clark would work as a radiation therapy, and it would be an obvious substitution of one treatment device for another.

**Regarding Claims 3,** Clark and McGinley et al. teach a mobile radiation treatment vehicle according to claim 2. Clark further teaches wherein said at least one radiation shield member has shielding that is selected from the group consisting of lead, aluminum, alloys of lead, polymers, concrete, and fiberglass ("protection from the radiation within procedure room 16 is provided by walls 28 and doors 11, 29 and 55 formed of 1/16 inch thick lead with plastic and wood covering, and a ceiling 30 ... formed of .40 inch thick aluminum," 2, 53-56).

**Regarding Claim 4,** Clark and McGinley et al. teach a mobile radiation treatment vehicle according to claim 2. Clark further teaches wherein said shielded partition member has shielding that is selected from the group consisting of lead, aluminum, alloys of lead, polymers, concrete, and fiberglass ("a technicians window 27 is located between the procedure room 16 and the control room 18 is formed of lead glass," 2, 60-61 where it would be obvious to make it fiberglass based, as long as it appropriately shields the technician).

**Regarding Claim 5,** Clark and McGinley et al. teach a mobile radiation treatment vehicle according to claim 4.

They fail to teach wherein said shielded partition member extends a length from a floor of said vehicle sufficient to shield a user.

However, it is an obvious design choice, to make the window as big as needed to view the procedure room, and would be known in the art how to achieve this.

**Regarding Claim 6,** Clark teaches a method comprising:

(a) preparing a mobile radiation treatment vehicle having (title)

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- (i) a patient treatment compartment having at least one radiation shield member (Figure 2, part 16), at least one radiation shield member positioned to prevent at least a portion of radiation emitted from a treatment device from passing through an interior of said patient treatment compartment to an outside area (walls part 28);
  - (ii) said treatment device capable of emitting radiation and positioned in said patient treatment compartment (Figure 2, part 24); and
  - (iii) a shielded partition member positioned in said patient treatment compartment and proximate to said treatment device, said shielded partition member positioned to reduce or prevent exposure to a user from radiation emitted from said treatment device during patient treatment (combination of wall 28 alongside right hand side of 16, window 27 and door 29 separating procedure room from technician console 27);
- (b) providing access to an interior area of said patient treatment compartment to a patient (through any of the doors 55, 11 and 29);
- (c) securing said treatment device in a position relative to said patient (“patient is placed on the scanner table 35,” 5, 6-7);
- (d) providing radiation to said patient (“conventional CT scanning then proceeds” 5, 9-10); and
- (e) shielding said user from at least a portion of said radiation emitted from said treatment device (“an operator at console 57 monitors the scanning procedure. The door 29 is always closed as is door 11 and the transformer room door 55,” 5, 12-15).

Clark fails to teach this method used in connection with radiation therapy.

Clark fails to explicitly state that the CT scanner is used in connection with radiation therapy.

However, McGinley et al. teach a shielded door for radiation therapy rooms, stating that “the present invention relates to a door for a treatment room with a medical accelerator which

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produces x-ray beams used in cancer therapy. This door prevents the escape of neutrons from the room while permitting access to the accelerator," (1, 7-10).

X-ray beams are used in cancer therapy. Clark shields from x-ray beams used in tomography. Therefore, the mobile radiation treatment vehicle of Clark would work as a radiation therapy, and it would be an obvious substitution of one treatment device for another.

**Regarding Claim 7 and 8,** Clark and McGinley et al. teach a method according to claim 6. Clark further teaches wherein said at least one radiation shield member or shielded partition member has shielding that is selected from the group consisting of lead, aluminum, alloys of lead, polymers, concrete, and fiberglass (2, 48-64).

**Regarding Claim 9,** Clark and McGinley et al. teach a method according to claim 8. Clark further teaches wherein said shielded partition member extends a length from a floor of said vehicle sufficient to shield a user (definition of wall).

**Regarding Claim 10,** Clark and McGinley et al. teach the method according to claim 6. Clark further teaches wherein said access is by a door (11, 55 and 29 of Figure 2).

**Regarding Claim 11,** Clark and McGinley et al. teach the method according to claim 10. Clark further teaches wherein said door is shielded to limit the passage of radiation (2, 53-55).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any art listed in the notice of references cited.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brooke Purinton whose telephone number is 571.270.5384. The examiner can normally be reached on Monday - Friday 7h30-5h00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Kim can be reached on 571.272.2293. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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